

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CYNTHIA WASSON AND KENNETH WASSON

RESPONDENTS,

v.

SHELTER MUTUAL INSURANCE COMPANY

APPELLANT.

DOCKET NUMBER WD72991
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 8, 2011

Appeal From:

Pettis County Circuit Court
The Honorable Robert Lawrence Koffman, Judge

Appellate Judges:

Division Two: James M. Smart, Jr., P.J., Mark D. Pfeiffer and Cynthia L. Martin, JJ.

Attorneys:

Laurie Schear Ward, Sedalia, MO, for **respondents**.

William Clayton Crawford and James Patrick Maloney, Kansas City, MO, for **appellant**.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CYNTHIA WASSON AND KENNETH WASSON,

RESPONDENTS,

v.

SHELTER MUTUAL INSURANCE COMPANY,

APPELLANT.

No. WD72991

Pettis County

Before Division Two: James M. Smart, Jr., P.J., Mark D. Pfeiffer and Cynthia L. Martin, JJ.

Cynthia Wasson was seriously injured in a motor vehicle accident. She and her husband, Kenneth Wasson, were insured under a Shelter Mutual Insurance Company automobile policy that included an endorsement for underinsured motorist (UIM) coverage. The driver who struck Cynthia was insured by State Farm Mutual Insurance. State Farm paid the Wassons the \$100,000 liability limits under that policy. The Wassons, whose total amount of monetary damages exceeded \$600,000, made a claim for UIM coverage under their Shelter policy. Shelter paid them \$150,000, claiming that to be the policy limits for UIM coverage after the policy's "set-off" provision is applied. Shelter arrived at \$150,000 by starting with the amount it says was the declared policy limit for UIM coverage, \$250,000, and off setting that by the \$100,000 paid by State Farm.

The Wassons filed a petition for declaratory judgment claiming that a total of \$500,000 was available for UIM coverage under the Shelter policy and that Shelter owed them an additional \$350,000. At the bench trial, the parties stipulated that Ms. Wasson's total economic damages exceeded \$600,000. The sole question with regard to the UIM claim was the amount of coverage that was applicable to those damages. The trial court found the UIM endorsement to be ambiguous when read in conjunction with the Declarations page, and, construing the ambiguity in favor of the Wassons, declared that they were entitled to \$500,000 in UIM coverage. As to the "set-off" issue, the court found that prior case law required it to reject Shelter's claim that it is entitled to offset its policy limits by the \$100,000 paid by State Farm. Rather, that amount must be applied to the total damages of \$600,000. In light of Shelter's prior payment of \$150,000, the court declared that "there remains \$350,000 due and owing under the [UIM] provisions of the contract."

Shelter appealed, claiming that the trial court erred in finding the UIM provisions of the policy to be ambiguous and in ruling in the Wassons' favor on that basis.

AFFIRMED IN PART; REVERSED IN PART.

Division Two holds:

(1) The trial court erred in declaring the UIM provision ambiguous and in concluding that the liability limits for UIM coverage was \$500,000. The policy's Declarations page, UIM endorsement, and disputed table would have been understood by an ordinary person of average understanding to provide limits of liability for UIM coverage of \$250,000 per person, \$500,000 per accident. Because the applicable limit of liability was \$250,000, in accordance with the clear language of the Declarations page, that portion of the judgment is reversed.

(2) Because the UIM endorsement in the policy states that Shelter "will pay the uncompensated damages subject to the limit of ... liability stated in this coverage," and because "uncompensated damages" are defined in the policy as "damages *exceeding* the total amount paid to an insured by a person legally obligated to pay those damages," the trial court did not err in finding that the "set-off" provision is at best ambiguous and that Shelter was not entitled to offset its policy limits for UIM coverage by the amount paid on behalf of State Farm's insured tortfeasor (\$100,000). That part of the judgment is affirmed.

Opinion by James M. Smart, Jr., Judge

November 8, 2011

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